IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 30469 of 2004(B)

PETITIONER:

SURESH KUMAR, PROPRIETOR,
PENTAGON COMPUTER COLLEGE, MUNICIPAL BUILDING,
ATTINGAL, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.M.R.RAJESH

RESPONDENTS:

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1. **STATE OF KERALA REP. BY THE SECRETARY**
   LOCAL SELF GOVT. DEPARTMENT, GOVERNMENT
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **ATTINGAL MUNICIPALITY, REP. BY ITS**
   SECRETARY, ATTINGAL, THIRUVANANTHAPURAM.

3. **THE SECRETARY, ATTINGAL MUNICIPALITY,**
   ATTINGAL, THIRUVANANTHAPURAM.

4. **THE EXECUTIVE ENGINEER, P.W.D.,**
   ATTINGAL, THIRUVANANTHAPURAM.

BY ADV. SRI.C.C.THOMAS
BY GOVERNMENT PLEADER SRI. K.I.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.30469/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- COPY OF THE APPLICATION BEFORE THE 2ND RESPONDENT ON 7.10.02 FILED BY THE PETITIONER.

EXT.P2:- COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT NO.12353 DT.17.10.02.

EXT.P2(a):- COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT NO.13421 D.T.2.11.02.

EXT.P2(b):- COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT NO.15875 DT./11.12.02.

EXT.P3:- COPY OF THE PETITION NO.7473/02 DT.13.11.02 FILED BY THE PETITIONER BEFORE THE MUNICIPAL COUNCIL HAVING.

EXT.P4:- COPY OF THE RECEIPT NO.28044 DT.31.3.04 ISSUED BY THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE PETITION BEFORE THE MUNICIPAL COUNCIL ON 17.2.04 FILED BY THE PETITIONER.

EXT.P6:- COPY OF THE AGREEMENT SIGNED BY THE PETITIONER ALONE AND RETAINED BY THE PETITIONER PERTAINING TO SHOP ROOM NO.XI/213.

EXT.P7:- COPY OF THE AGREEMENT SIGNED BY THE PETITIONER ALONE RETAINED BY THE PETITIONER PERTAINING TO SHOP ROOM XI/1331.

EXT.P8:- COPY OF THE RECEIPT NO.28045 DT.31.3.04 ISSUED BY THE 2ND RESPONDENT.

EXT.P8(a):- COPY OF THE RECEIPT NO.28046 DT.31.3.04 ISSUED BY THE 2ND RESPONDENT.

EXT.P9:- COPY OF THE RECEIPT NO.000133 DT. 3.4.04 ISSUED BY THE 2ND RESPONDENT.

EXT.P9(a):- COPY OF THE RECEIPT NO.00134 DT. 3.4.04 ISSUED BY THE 2ND RESPONDENT.

EXT.P10:- COPY OF THE AGREEMENT DT.1.4.04 WITH RESPECT TO SHOP ROOM NO.XI/213.

EXT.P11:- COPY OF THE AGREEMENT DT.1.4.04 WITH RESPECT TO SHOP ROOMS NO.XI/1331.

EXT.P12:- COPY OF THE AGREEMENT EXECUTED BETWEEN M.PREMAKUMARI AND THE 2ND RESPONDENT DT.30.3.04.

EXT.P13:- COPY OF THE NOTICE R4/109/04 DT.23.8.04 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

ANNEXURE R2(a):- COPY OF THE REPRESENTATION DT.7.10.02 SUBMITTED BEFORE THE 3RD RESPONDENT BY THE PETITIONER.

ANNEXURE R2(b):l- COPY OF THE REPRESENTATION DT.13.11.02 SUBMITTED BEFORE THE ATTINGAL MUNICIPAL COUNCIL BY THE PETITIONER.

ANNEXURE R2(c):- COPY OF THE REPRESENTATION DT.17.2.04 SUBMITTED BEFORE THE ATTINGAL MUNICIPAL COUNCIL BY THE PETITIONER

/TRUE COPY/

PIUS C. KURIAKOSE, J.

W.P.(C) No. 30469 OF 2004

Dated this the 23rd day of January, 2006

JUDGMENT

The petitioner, proprietor of Pentagon Computer College, a licencee under the 2nd respondent-Attingal Municipality has filed this wit petition for a declaration that Exts.P10 and P11 documents notwithstanding their nomenclature as licence agreements are lease agreements and that the petitioner's status is that of a tenant under the 2nd respondent and for a further declaration that the 2nd respondent Municipality is bound by the relevant Government Orders regarding fixation of rent/hike of rent for Government buildings. The Writ Petition also prays for a writ of mandamus directing respondent Nos.2 to 4 to fix the rent for shop room Nos.XI /213 and XI/1331 as per the Government Orders relating to fixation of rent for Government buildings within a time frame.

2. The 1st respondent in the Writ Petition is the State. 2nd and 3rd respondents are the Municipality and its Secretary and the 4th respondent is the Executive Engineer, PWD. According to the petitioner, the Municipality had rented out two rooms having one door No.XI/213 to one Sri.Pradeep Kumar who conducted a studio by name "Santharam Studio". Sri. Pradeep Kumar sub-let the rooms to the

petitioner. Though the petitioner was promptly giving rent to Sri.Pradeep Kumar, he defaulted payment of rent and the Municipality sealed the shop rooms. The petitioner thereupon filed Ext.P1 application before the Municipality. On the basis of that application and on the basis of the remittances by the petitioner of all the entire rent which was due from Sri.Pradeep Kumar as on March 2003, the Municipality permitted the petitioner to occupy the rooms. Exts.P2, P2 (a) and P2(b) are receipts which will show that amounts of Rs.29,766/- and Rs.35, 698/- were paid by the petitioner. Thereafter, on 13.11.02, petitioner submitted Ext.P3 petition before the Municipal council requesting the council to change the rental arrangement to his name. But on 4.2.04, the rooms were again locked and sealed by the 2nd respondent-Municipality. The total rent for the year 2003-04 was Rs.43,659/-. On receiving notice from the Municipality the petitioner remitted a sum of Rs.48,787/-to the Municipality and Ext.P4 is copy of the receipt. Thereafter the petitioner submitted Ext.P5 petition dt.17.2.04 before the Municipal Council expressing his willingness to pay the entire arrears of rent and requesting that the rental agreement be changed to his name. Petitioner submits that the 2nd respondent finally agreed to let out the rooms to the petitioner. Though the rooms were having a common No.XI /213 earlier and the annual rent for 2003-04 was Rs.43,659/-, now two separate numbers namely XI/213 and XI/1331 were assigned by the Municipality to the rooms. The petitioner

having already invested lot of money in his computer centre and there being quite a number of students studying, it is difficult to relocate the institution. Therefore under compelling circumstances, the petitioner became constrained to subscribe his signatures to the agreements which were handed over by the 2nd respondent to him. Under these agreements, for shop room No.XI/213 annual rent fixed was Rs.30,000/- while for shop room No.XI/1331, the annual rent was fixed at Rs.93,060/-. The total rent was thus approximately 2.5 times than that of the previous year. Apart from this deep enhancement in rent, deposits of Rs.50,000/- and Rs.75,000/- respectively were fixed for the rooms. Exts.P6 and P7 are copies of two agreements which were thus got executed from the petitioner. Exts.P8 and P8(a) are receipts against deposit of Rs.50,000/- and quarterly rent of Rs.7,500/- paid in respect of Room No.XI/213. Exts.P9 and P9(a) are receipts against payment of deposit of Rs.75,000/- and quarterly rent of Rs.25,635/- paid in respect of room No.XI/1331.

3. The petitioner contends that it was under duress that he executed the agreements and made payments. He complains that he has been singled out among various tenants of the Municipality and is discriminated in the matter of fixation of rent and security. Exts.P10 and P11 are copies of the respective agreements relating to rooms given to him by the Municipality on his application. Petitioner submits that the blank spaces in Exts.P6 and P7 have been filled up in Exts.P10 and P11

as a result of which the agreements now read as licence agreements. He contends that though Exts.P10 and P11 are styled as licence agreements, the documents will have to be understood as lease agreements since by their substance and essence they are lease agreements themselves. Petitioner has produced Ext.P12 copy of a rental agreement executed between the Municipality and one M.Premakumari in respect of another shop room in the same shopping complex and contends that the stand of the petitioner also is only that of a tenant and not a licencee. Petitioner then submits that as per relevant Government Orders issued by the Public Works Department regarding the rates of rent applicable to the Government buildings, rent cannot be hiked by more than 10% annually. These Government Orders, it is contended, are applicable to local authorities also. Therefore the present hike which is by about 250% is arbitrary and illegal. Since these Government Orders have statutory effect, the petitioner in spite of having executed the agreement is not estopped from challenging fixation of rent, since it is trite law that there is no estoppel against statutes. On 14.9.04 petitioner received a demand notice dt.23.8.04 calling upon him to pay an amount of Rs.15,728/- to the Municipality being the rent for room No.XI/213 for the period from 25.4.04 till 25.7.04. Ext.P13 is copy of that notice. Petitioner submits that the building in question is exempted from the application of Kerala Lease and Rent Control Act therefore it is the 4th respondent-Executive Engineer who is

the statutory authority for fixing the fair rent. At present revised Government Orders of 1999 governs the principles for fixation of fair rent. Making the above averments the petitioner has raised ground A to H and filed this Writ Petition seeking the reliefs already indicated.

4. On behalf of the Municipality a detailed statement has been filed by their counsel. It is contended that the Writ Petition is not maintainable in law. Exts.P10 and P11 are licence agreements voluntarily executed by the petitioner in accordance with the requirements under Section 215 of the Kerala Municipality Act. Having voluntarily executed the agreements with open eyes the petitioner is not entitled to challenge their legality and validity. The issue raised by the petitioner lies purely in the realm of contract and for that short reason alone the Writ Petition is liable to be dismissed. Statement points out that licence fee and deposit to be levied in respect of room No.XI/213 was fixed by Municipal Council and agreed to by the licencee and in respect of shop No. XI/1331, the licence fee and deposit etc were determined in public auction and through negotiation in which the petitioner participated. The licence fee agreed upon in respect of that room was voluntarily offered by the petitioner and the council later accepted and decided to allot the room to the petitioner pursuant to which decision only he executed Ext.P11 agreement. Nothing prevented the petitioner from backing out, if he felt at any time before execution of the agreement that the fee was exorbitant. He happily

executed Exts.P10 and P11 accepting the terms and conditions and has now filed this Writ Petition for evading payment on an experimental basis. Annexures R2(a) and R2(b) produced along with statement are copies of the representations submitted by the petitioner before the Municipality requesting that he, the sub-lessee, may be permitted to have occupation of the rooms. It was acting on Exts.R2(a) and (b) that the order of attachment which had been passed by the Municipality against Sri.Pradeep Kumar was lifted and the lock and zeal placed by the Municipality on the rooms were removed. The statement refers to Section 215(2) (A) of the Kerala Municipality Act and submits that the Municipality does not give shop rooms on rent but give them out on licence basis after charging annual licence fee. It is after considering the above issue that the Municipal council on 20.01.2003 empowered the Secretary to take appropriate action after hearing the licencee-Pradeep Kumar and the petitioner. The 3rd respondent-Secretary accordingly heard both the petitioner and the licencee-Pradeep KUmar and the hearing revealed that Sri.Pradeep Kumar had actually sublet the shop rooms to the petitioner in violation of the provisions contained in Section (4) (2) and also of the fact that the computer centre and studio were being conducted in the Municipal rooms without obtaining trade licence from the Municipality and also that the conditions of licence which have been given to Sri.Paradeep have been violated. Accordingly, the 3rd respondent cancelled the licence given to

Sri.Pradeep Kumar and notice was issued to vacate the premises within 7 days. After the said order the licencee-Pradeep Kumar field OS No.89/03 before the Attingal Munsiff's court and obtained interim order in his favour. Finally the OS was decided in favour of the Municipality and since there was arrears of licence fee, on 4.2.04, the shop rooms were again attached and kept under lock and seal. Notices were again issued on 11.2.04 to licencee-Sri.Pradeep Kumar and to the petitioner demanding them to remit the arrears of licence fee and remove their articles and it was thereafter the petitioner made the remittance of Rs.48,787/- and submitted a representation confessing that he had taken on sub-lease a portion of shop room No.XI/213 and that it was done without informing the Municipality and expressing his willingness to pay the arrears of licence fee. Annexure R2(c) is the copy of the representation. The licencee-Pradeep Kumar also gave a letter to the Municipality expressing his willingness to vacate the premises. Both these representations were placed before the Municipal Council and it was decided by the Council to let out a portion of the shop room where the computer centre is run by the petitioner to him as shop room No.XI/213. Fixing Rs.2,500/- as Municipal licence fee and three months licence fee in advance and on the further condition that there must be an interest free deposit of Rs.50,000/-. On clearing the arrears of licence fee till 31.03.2005 the other portion of the room wherein the studio was conducted was decided to be given a new number and to let

out the same through public auction. Accordingly, Ext.P10 agreement was executed in respect of shop No.XI/213 by the petitioner to remit the deposit as stipulated. Pursuant to the decision of the council the other portion was numbered as XI/1331 and was put in public auction on 25.03.04. Petitioner also participated in the public auction and offered Rs.7,755/- per month as licence fee and Rs.75,000/- as interest free deposit. Petitioner's offer was accepted and it was accordingly that he executed Ext.P11 agreement.

5. Elaborate submissions were placed by Sri.M.R.Rajesh, learned counsel for the petitioner who referred to Exts.P1 to P3, P5 to P7, P9, P9(a), P10 and P11, apart from referring to averments in the Writ Petition and also Advocate Sri. M.G. Karthikeyan representing Sri.C.C. Thomas, counsel for respondents 2 & 3. He would place reliance on judgment in **Soman v. Kottarakkara Grama Panchaya**t (2003 (2) KLT 1007). It was conceded before me by both sides that subsequent to the filing of the Writ Petition on account of the defaults caused by the petitioner in the matter of paying the agreed amounts as per Exts.P10 and P11, the rooms have been locked and sealed by the Municipality and the petitioner no longer retains possession of the rooms. In view of the subsequent events, I do not propose to decide on the merit of the grounds raised. The Writ Petition will stand dismissed as having become infructuous. However, the petitioner is given permission to file a detailed comprehensive representation voicing all his grievances

before the Municipality and if the Municipality receives such a representation within one month of the petitioner receiving copy of this judgment, the Municipality will consider the representation bestowing as much sympathy as the same deserves and take a decision within two months of receipt of the representation. As regards the rooms in question, they will not be let out by the Municipality for another two months from today. It is also made clear that even thereafter if the Municipality decides to licence out the rooms, the same shall be by public auction or by inviting tenders and the petitioner will also be entitled to participate in the auction or submitting tenders like any other citizen.

PIUS C. KURIAKOSE, JUDGE

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